

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY J. WEBSTER,

Petitioner,

v.

WARDEN, San Quentin State
Prison,

Respondent.

No. CIV. S-93-0306 LKK DAD

DEATH PENALTY CASE

AMENDED ORDER

Petitioner, a state prisoner under sentence of death, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 4, 2014, the Magistrate Judge filed Findings and Recommendations, which recommended that the application be granted on Petitioner's claim that he was denied effective assistance of counsel at the penalty phase of his trial. The Magistrate Judge further recommended that Petitioner's remaining claims be denied. The Findings and Recommendations were served on the parties and contained notice to the parties that any

1 objections to the findings and recommendations were to be filed
2 within thirty days. Both parties filed objections to the
3 findings and recommendations, and both filed replies to the
4 other's objections.

5 Petitioner objected to the Magistrate Judge's rejection of
6 his claims that in violation of his rights under the U.S.
7 Constitution,

8 1. he was denied meaningful appellate review by the
9 California courts,

10 2. California's statutory scheme failed to adequately narrow
11 the application of the State's death penalty,

12 3. the definition of the "lying in wait" special
13 circumstance, which was used to qualify Petitioner for the death
14 penalty, was unconstitutionally broadened to cover his
15 circumstance,

16 4. regarding jury instructions during the penalty phase, the
17 trial judge erred by giving CALJIC 8.84.2, which states that "you
18 shall impose a sentence of death" if the jury concludes that the
19 aggravating factors outweigh the mitigating factors,

20 5. the trial court failed to conduct an independent review
21 of the death sentence, as required by California law,

22 6. he received ineffective assistance of counsel during the
23 guilt phase of his trial, inasmuch as his counsel failed to
24 investigate and introduce certain mitigating evidence, and

25 7. the cumulative impact of the above deprived Petitioner of
26 a fair trial.

27 Petitioner did not object to the Magistrate Judge's
28 rejection of his claims that in violation of his rights under the

1 U.S. Constitution,

2 8. the "lying in wait" special circumstance failed to make a
3 meaningful and principled basis for distinguishing capital and
4 non-capital cases,

5 9. the application of "Proposition 8" to his suppression
6 motion violated his rights under the Ex Post Facto Clause of the
7 U.S. Constitution,

8 10. the trial court improperly admitted the testimony of
9 Michelle Cram and Detective Burchett,

10 11. he received ineffective assistance of counsel during
11 jury selection,

12 12. he received ineffective assistance of counsel during a
13 pretrial suppression hearing, inasmuch as his counsel failed to
14 adequately cross-examine the prosecution's witnesses at that
15 hearing, and

16 13. the trial court's failure to put side-bar conversations
17 on the record precluded meaningful appellate review and violated
18 his Due Process rights.

19 The Respondent objected to the Magistrate Judge's
20 recommendation that the application be granted with respect to
21 Petitioner's claim that he was denied effective assistance of
22 counsel at the penalty phase of his trial in violation of his
23 rights under the Sixth Amendment to the U.S. Constitution.

24 The court has reviewed the file, including the Findings and
25 Recommendations, the objections and the replies, and finds the
26 Findings and Recommendations to be supported by the record and by
27 the Magistrate Judge's analysis. Accordingly, **IT IS HEREBY**
28 **ORDERED** that:

1 1. The findings and recommendations filed June 4, 2014 (ECF
2 No. 480) are adopted in full.


3 2. Petitioner's application for a writ of habeas corpus is
4 **GRANTED** on the grounds that he was denied effective assistance of
5 counsel in connection with the penalty phase of his trial, in
6 violation of his rights under the Sixth Amendment to the U.S.
7 Constitution, as alleged in Claim 22 of his application.

8 Petitioner's sentence of death shall be vacated and a lesser
9 sentence imposed that is consistent with state law, unless the
10 state commences a new penalty trial within ninety (90) days of
11 the filed date of this order.

12 3. Petitioner's application is denied in all other
13 respects.

14 4. No certificate of appealability shall issue. See 28
15 U.S.C. § 2253.¹

16 DATED: August 26, 2014.

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19 
20 LAWRENCE K. KARLTON
21 SENIOR JUDGE
22 UNITED STATES DISTRICT COURT
23

24 ¹ See also, Hanson v. Mahoney , 433 F.3d 1107, 1111 (9th
25 Cir. 2006) ("Under 28 U.S.C. § 2253(c)(1), a 'circuit justice or
26 judge' must issue a COA before an appeal of a final order in a
27 case under § 2254 may be taken. It is well settled that the
28 phrase 'circuit justice or judge' - although ambiguous - includes
district judges as well as circuit judges"), cert. denied, 547
U.S. 1180 (2006).